

FILED

MAY 21 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWARD EUGENE MOTLEY,

Petitioner,

vs.

W.J. SULLIVAN, et al.,

Respondents

C 08-1362 MJJ (PR)

**ORDER DENYING MOTION
FOR RECONSIDERATION**

(Docket No. 10)

Edward Eugene Motley ("petitioner"), a California prisoner, filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his 1992 conviction and sentence in Santa Clara County Superior Court. Because petitioner had challenged this same conviction in a prior petition filed in this court, Motley v. Runnels, No. 05-3254 MJJ (PR), the petition was dismissed as a second or successive petition, pursuant to 28 U.S.C. § 2244(b)(3)(A). Petitioner has now filed a motion for reconsideration of the order of dismissal.

Petitioner claims that he is entitled to reconsideration pursuant to Federal Rule of Civil Procedure 60(b)(1) and 60(b)(3). Rule 60(b)(1) provides for relief upon a showing of mistake, inadvertence, surprise or excusable neglect, and Rule 60(b)(3) provides for relief upon a showing of fraud by the adverse party. Petitioner argues that the court should

G:\PRO-SE\MJJ\HC.08\motley.rec.wpd

1 consider his new claims even though they pertain to the same conviction and sentence
2 challenged in his prior petition. As explained in the dismissal order, petitioner must first
3 obtain authorization from the Ninth Circuit to file a second or successive petition before
4 this court may consider his claims. 28 U.S.C. § 2244(b)(3)(A). Consequently, petitioner
5 must make the arguments raised in the present motion in a request before the Ninth Circuit
6 for permission to file a second or successive petition, not in a motion for reconsideration in
7 this court. As there has been no mistake, inadvertence, surprise, excusable neglect or
8 fraud by the adverse party, nor has petitioner shown any other reason justifying relief, the
9 motion for reconsideration is DENIED.

10 This order terminates Docket No. 10.

11 IT IS SO ORDERED.

12 DATED: 6/2/08



13
14 SUSAN ILLSTON
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MOTLEY et al,

Plaintiff,

v.

SULLIVAN et al,

Defendant.

Case Number: CV08-01362 MJJ

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 22, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Edward Eugene Motley H-56441
CA Correctional Institution
P.O. Box 1902
Tehachapi, CA 93581

Dated: May 22, 2008



Richard W. Wieking, Clerk
By: Monica Narcisse, Deputy Clerk